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Court : Patna

Decided On : Oct-01-1999

Judge : Aftab Alam, J.

Acts : Minimum Wages Act, 1948

Appeal No. : C.W.J.C. No. 10982/1997

Appellant : Ayodhya Upadhya

Respondent : State of Bihar and ors.

Advocate for Def. : Mr. Sia Ram Sahi

Disposition : Petition allowed

Judgement :

Aftab Alam, J.

1. The petitioner seeks to challenge the orders passed under the Minimum Wages Act in which he is held to be the employer of respondent No. 6 and is directed to pay certain amounts being the differential wages alongwith penalty as claimed by respondent No. 6.

2. On behalf of respondent No. 6 a claim was made against the petitioner stating that he was employed as a jeep driver and was paid wages at a rate lower than

the minimum wages fixed under the Act. A prayer was accordingly made to direct the petitioner to pay him the differential wages alongwith penalty.

3. The authority under the Minimum Wages Act allowed the claim and on appeal the order passed by the competent authority was affirmed.

4. Counsel appearing for the petitioner assailed the orders passed by the authorities under the Minimum Wages Act on a simple but effective ground. It was submitted that 'driver' was not a scheduled employment under the Minimum Wages Act and a driver does not find mention in the schedule to the Act.

5. Learned Counsel pointed out that the post of driver undoubtedly finds mention in some notifications issued under the Minimum Wages Act but those related to specified employments duly enumerated under the schedule. For example, the post of driver may be found in notification issued in relation to 'employment in public motor transport' which in turn is one of the scheduled employments. But the post of driver as such under a private employer is not one of the scheduled employments and the provisions of the Minimum Wages Act, therefore, would have no application even on assuming all the allegations made on behalf of respondent No. 6 to be correct.

6. It may be noted that in the impugned order passed by the sub-divisional Officer, Bettiah, a reference is made to a notification No. 103/83 L.B. 450, dated May 16, 1983. On the prayer made on behalf of Mr. Sia Ram Sahi, learned Counsel for the respondent No. 6 sufficient time was allowed to him to search out the notification. However, today, Mr. Sia Ram Sahi expressed his inability in finding the notification. Even if such a notification is in existence, presumably it refers to the post of driver in some scheduled employment. There can be no notification in respect of a driver under a private employer as that employment is not a scheduled employment.

7. For the aforesaid reasons the challenge made on behalf of the petitioner must succeed. The impugned orders passed under the Minimum Wages Act are accordingly set aside. Consequently the certificate proceeding initiated against the petitioner would also abate. This order, however, will not prevent respondent No.

6, from seeking his claim either under the Payment of Wages Act or in any other appropriate proceedings. In case an action is brought by respondent No. 6 that will be decided on its own merits and in accordance with law.

8. In the result, this writ petition succeeds but with no order as to costs.

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